Nos. 80-470 and 80-478

In the Supreme Court of the United States

October Term, 1980

No. 80-478

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION; TEAMSTERS LOCAL 2707; MARVIN L. GRISWOLD; TEAMSTERS LOCAL 732,
Petitioners,

vs.

TRANS INTERNATIONAL AIRLINES, INC.,
Respondent.

No. 80-470

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Petitioner,

vs.

TRANS INTERNATIONAL AIRLINES, INC.,
Respondent.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN RESPONSE

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QUESTIONS PRESENTED

Teamsters Petition No. 80-478

1. Does a carrier's action for injunctive and equitable relief against a strike remain live and capable of adjudication despite the settlement by execution of a new collective-bargaining agreement, of all issues out of which the strike and the main action arose, simply because the carrier claims an entitlement to compensatory fines for contempt of a preliminary injunction?

2. Did the district court lack jurisdiction under the Railway Labor and Norris-LaGuardia Acts to enjoin flight engineers employed by the carrier from respecting the picket lines established by its flight attendants, where the engineers' sympathetic action did not arise from an arbitrable dispute between them and the carrier, but was engaged in solely to support the flight attendants' bargaining position in a major dispute over changes in rates of pay, rules and working conditions?

ALPA Petition No. 80-470

Does the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*, deprive the federal courts of jurisdiction to enjoin concerted action by airline pilots, through their union, to honor picket lines (engage in a "sympathy strike") in support of flight attendants on the same airline who are engaged in a legal Railway Labor Act, 45 U.S.C. §151 *et seq.*, strike?

TIA Petition No. 80-470

1) Whether under the Railway Labor Act, as amended, 45 U.S.C. §151 *et seq.*, a collective bargaining agreement providing that the agreement will continue as to part of a carrier's operations, after it has otherwise expired and after Section 6 has been exhausted as to the carrier's

other operations, may be enforced by injunction compelling the Union to comply with its Section 2, First, obligation to maintain its agreement for the stated term?

2) Whether, under the facts stated above, the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*, precludes the federal courts from enforcing by injunction a collective bargaining agreement partially limiting strikes?

3) Whether, under the Railway Labor Act, unions may be enjoined, under their Section 2, First, 45 U.S.C. §152, First, duty to "make and maintain" agreements, from compelling their members to engage in sympathy strikes during mid-contract?

4) Whether this Court's decision in *Buffalo Forge Co. v. United Steelworkers,* 428 U.S. 397 (1976), decided under the National Labor Relations Act, as amended, 29 U.S.C. §151 *et seq.* applies to sympathy strikes under the Railway Labor Act?

5) Whether parties to a collective bargaining agreement under the Railway Labor Act may contract to permit compulsory, union-sanctioned strikes in mid-term of the contract, despite the Act's Section 2, First, requirement to maintain contracts without strikes?

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ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN RESPONSE

By direction of the Clerk of this Court, Respondent TRANS INTERNATIONAL AIRLINES, INC. (hereinafter "TIA") responds to the petitions for writs of certiorari filed by the Air Line Pilots Association International, AFL-

CIO, in No. 80-470 (hereinafter "ALPA Petition") and by the International Brotherhood of Teamsters in Case No. 80-478 (hereinafter "Teamsters Petition"). References are also made to the petition filed by TIA in Case No. 80-480, which arises out of the same decision by the Court of Appeals, Ninth Circuit.

TIA supports the ALPA Petition and Question 2 of the Teamsters Petition, both of which raise one aspect of the overriding legal issues: The effect of the Norris-LaGuardia Act[1] on the jurisdiction of federal courts to enjoin primary strikes and sympathy strikes involving Railway Labor Act[2] carriers. Guiding law on these issues is urgently needed by carriers, unions, and employees operating under the RLA.

TIA opposes grant of a writ of certiorari on the first question raised by the Teamsters Petition, of whether the mere signing of a collective bargaining agreement *ipso facto* defeats TIA's claim for damages resulting from the Teamsters' conduct in contempt of the no-strike injunction. This specious mootness argument was not raised in the District Court, and its consideration would cloud the significant issues related to RLA strike injunctions.

STATEMENT OF THE CASE

TIA's flight attendants, represented by the Teamsters Union, engaged in protracted negotiations for a new agreement prior to being released to strike by the National Mediation Board, beginning September 7, 1977. The expired contract contained the following clause:

> Section D. The Union further agrees that the Flight Attendants will continue to perform all duties which

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1. 29 U.S.C. §101, *et seq.*
2. 45 U.S.C. §151, *et seq.*

> are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Flight Attendants withdraw from commercial airline service because of a labor dispute arising out of negotiations for a new contract after the expiration date of this agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, provided the Company shall submit to the Union, when requested, proof that a particular flight is being flown or operated under charter or contract to the Department of Defense.

TIA promptly obtained injunctions against the flight attendants barring them from striking military flights in violation of the above clause, and an injunction against the flight engineers and pilots barring them from striking military flights in sympathy with the action of the flight attendants. The flight attendants and pilots were working under valid collective bargaining agreements which contained various general no-strike clauses, military no-strike clauses and picket line clauses. The District Court declined to enjoin the flight attendants, strike of commercial flights on grounds not here disputed. The District Court likewise refused to enjoin the pilots and flight engineers from engaging in sympathy strikes in support of the flight attendants' strike of TIA's commercial operations. That refusal is here disputed and raises the basic issue of a proper accommodation of the Railway Labor Act and the Norris-LaGuardia Act.

Beginning about October 30, 1977, the Teamsters openly and flagrantly instructed flight engineers and flight attendants to disobey the District Court injunctions and to strike TIA's military flight operations. On November 1, 1977, the Teamsters were found in contempt of the District Court's orders. Only then did they instruct their members

to resume military flying. TIA's compensatory contempt claim of $400,000 for damages suffered during the illegal military shutdown is still pending.

The ultimate issue in all these Petitions is whether, or to what extent, the Norris-LaGuardia Act[3] prevents a federal court from issuing injunctions against primary strikes and sympathy strikes directed at Railway Labor Act[4] carriers.

This issue consists of two sub-issues:

(1) Whether the Norris-LaGuardia Act forecloses federal injunctions enforcing a clear agreement between the parties that any major dispute strike would not extend to military flights; and

(2) Whether the Norris-LaGuardia Act forecloses federal injunctions against sympathy strikes by employees under a collective bargaining agreement during the term of that agreement.

The ALPA Petition, No. 80-470, and the second question of the Teamsters Petition in 80-478, as well as questions 3, 4, and 5 of TIA's Petition in 80-480, raise the second sub-issue stated above. But the sub-issues are inextricably interrelated and should be treated together because (a) both involve the accommodation of the Norris-LaGuardia Act to the dispute resolution procedures and no-strike policy of the Railway Labor Act; and (b) both address the propriety of federal court injunctions against violations of the RLA duty to "make and maintain"[5] labor agreements.

RLA carriers, like unions and employees operating under RLA provisions, need guiding law on this important issue, on which the courts are in conflict.

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3. 29 U.S.C. §101, *et seq.*
4. 45 U.S.C. §151, *et seq.*
5. 45 U.S.C. §152, First.

ARGUMENT

I. THE QUESTION PRESENTED BY THE ALPA PETITION AND BY THE SECOND QUESTION IN THE TEAMSTER PETITION RAISES AN IMPORTANT ISSUE OF FEDERAL LAW. REVIEW OF THIS QUESTION SHOULD BE GRANTED IN ORDER THAT RLA CARRIERS, UNIONS, AND EMPLOYEES MAY RECEIVE CRUCIAL GUIDANCE UNDER THAT ACT.

A. The Flight Attendants' Primary Strike of Military Flights Was in Direct Violation of Their Collective Bargaining Agreement and Thus in Violation of Their RLA Duty to Make and Maintain Agreements.

Both the District Court and the Court of Appeals, below, agreed that the purpose and effect of the flight attendants' military no-strike clause is clear beyond cavil. Indeed, the Court of Appeals ruled that the flight attendants' strike of military operations was such an unambiguous violation of the clause that arbitration of the issue was not necessary.

While finding the flight attendants' military strike was illegal, neither of the courts below viewed the strike in its proper statutory context. The effect of the military no-strike clause was that the entire collective bargaining contract continued in full force and effect with respect to military flights after it had expired with respect to, and the union was free to strike, commercial flights. That is, the contract had in effect two expiration dates: one applying to commercial flight operations and a later expiration date applying to military flight operations.

A clear indication that the flight attendants' union has acknowledged—indeed asserted—that the con-

tract continued in force during the strike as to military flights is found in Teamster flight attendant grievances demanding contractual vacation pay, guarantees and other forms of contractual benefits accrued during the strike period. Thus, not only did the military no-strike clause survive the expiration date stated in the contract and the statutory renegotiation procedures, but the entire contract by its terms survived as to military flights until a new contract could be negotiated. Neither court focused on this undisputed fact.

The Railway Labor Act, 45 U.S.C. §2, First, requires that employers and unions "make and maintain" collective bargaining agreements during their stated term. If the parties agree to a two-year contract, they must maintain that contract for two years without strikes. If they agree to a three-year contract, they must maintain that agreement for three years without strikes. The Court in *Seaboard World Airlines, Inc. v. Transport Workers Union,* 425 F.2d 1086 (2d Cir. 1970), *reaff'd on further consideration,* 443 F.2d 437 (1971), held that an agreement of longer duration, perhaps even an indefinite agreement, was enforceable by court injunction under the Section 2, First, statutory requirement.

The Court of Appeals was correct in searching for a statutory basis for the injunction against the flight attendants' strike of military operations (although as noted below, there is a contractual basis for its action). Injunctions based on the Section 2, First, duty are issued not to enforce the contract but to enforce the statutory duty which arises out of the contractual commitment. The Court of Appeals having found the military no-strike clause clear, valid and consistent with the RLA policy of avoiding strikes as well as the government's interests of obtaining uninterrupted military airlift capacity, there is no reason that the Norris-LaGuardia Act should bar the Court from

enforcing by injunction the Railway Labor Act's command that unions make and maintain their contracts without strike.

Contrary to the Court of Appeals decision, the history of the RLA is that courts do enjoin strikes in breach of the duty to maintain agreements even where the underlying union dispute is not subject to arbitration.

In *Long Island R.R. Co. v. System Federation, No. 156*, 368 F.2d 50 (2d Cir. 1966), the contracts were to expire on January 1, 1967 and a "moratorium agreement" precluded Section 6 opener notices before that time. In January 1966, the union requested meetings on wage increases and struck when the company refused. This was neither an arbitrable minor dispute nor a major dispute. It was a strike in mid-contract and a violation of the §2, First, duty to "make and maintain agreements . . . in order to avoid any interruption to commerce." The strike was enjoined on these grounds.

Furthermore, the Court of Appeals, below, erred in finding that "the Norris-LaGuardia Act was passed to limit our role in enforcing labor contracts." (Teamsters Petition at 54a). The abuses remedied by the Norris-LaGuardia Act arose out of injunctions against organizational strikes, not injunctions enforcing existing collective bargaining contracts. Frankfurter & Green, The Labor Injunction, 5-46 (1930). The policy culminating in this Court's decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976), which circumscribed injunctive enforcement of no-strike clauses, arose under the National Labor Relations Act where the Court was primarily concerned about pre-empting the arbitrator's jurisdiction to interpret the scope of the contractual no-strike clause. Under the RLA, where the no-strike obligation arises out of the statute and there is no administrative agency to enforce this obliga-

tion, the courts should not be limited from enforcing it by the Norris-LaGuardia Act.

Indeed, the legislative history of the Norris-LaGuardia Act shows that Congressman LaGuardia repeatedly advised Congress that disputes under the already existing Railway Labor Act would be governed by that Act, not by the Norris-LaGuardia Act. See Appendix at A1-A3.

Illogically, the Court of Appeals distinguished the contractual limitation on subject matter for bargaining and strikes, which was enforced by injunction in *Seaboard World Airlines, supra,* from the contractual limitation on the scope of a strike after bargaining, which is involved here. Limited strikes are certainly consistent with the RLA's central purpose.

Hamstrung by these errors, the Court of Appeals was driven to the anomalous conclusion that a possible violation of a no-strike clause could be enjoined but a clear violation could not.

This Court should grant review and clarify these issues to avoid such a result and to assure the federal courts that notwithstanding the Norris-LaGuardia Act, they, and not arbitrators, have jurisdiction to enforce the "make and maintain" obligation of Section 2, First, of the RLA when it is violated by a mid-contract strike not subject to arbitration and not subject to Section 6 major dispute procedures.

Contractual Basis for Injunction Against Flight Attendants' Primary Strike.

This Court said in *Buffalo Forge* that

> were the issue arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases

> would permit an injunction to enforce the arbitral decision. *Steelworkers v. Enterprise Corp.*, [363 U.S. 593 (1960)].

428 U.S. at 405. Applying *Buffalo Forge* to the unusual facts of the instant case, where the Court of Appeals found the flight attendants' strike of military operations to be such a plain and unambiguous violation of a clear contract clause as not to require arbitration, the Court of Appeals should have proceeded to enjoin the strike just as if it had in hand the arbitral decision it had found unnecessary.

B. The Engineers' and Pilots' Sympathy Strikes in Support of the Flight Attendants' Unlawful Primary Strike Were Enjoinable As Violations of the RLA.

The District Court enjoined the engineers' and pilots' sympathy strike of military flights, *Buffalo Forge* and Norris-LaGuardia notwithstanding, based on their respective military no-strike clauses and based on the fact that the primary strike had already been enjoined. The District Court did find, however, that *Buffalo Forge* prevented an injunction against the sympathy strike of commercial flights, even in the face of the substantial minor dispute concerning the several no-strike and picket line clauses involved.

The Court of Appeals reversed, finding *Buffalo Forge* inapposite because of the substantial differences in the regulatory structures of the NLRA and RLA. It found the statutory *status quo* under the RLA to be "no-strike" pending an arbitrator's decision. It did not deal with the concept of enjoining sympathy strikes in mid-contract as a violation of the "make and maintain" obligation under the RLA.

TIA urges (a) that sympathy strikes in mid-contract can be enjoined under the "make and maintain" obligation of RLA Section 2, First, and (b) that sympathy strikes can be enjoined under the minor dispute concept. *Buffalo Forge* is rooted in the policies and structure of the NLRA and has no application to this RLA case.

Sympathy Strikes Violate the Statutory Duty to Maintain Agreements.

The above discussion as well as that below demonstrates that in the RLA Congress intended to substitute rigid and mandatory dispute resolution procedures for strikes. Strikes are permitted only in a very limited situation—when the striking union has exhausted Section 6 procedures and has been released to strike by the National Mediation Board.

Since there is no express mention of sympathy strikes in the RLA—neither approval nor prohibition—there is no justification for a judicially constructed exception to the Act's general structure. Not all unions have the right to strike simply because one union may legally strike. As the Teamsters Petition notes, unions can have common contract expiration dates if they want the support of others, and can have one general strike period every three years rather than a separate strike every six months as six separate craft contracts open *seriatim*. The Teamsters' prediction that unions would refuse to agree to no-strike clauses tractual damage claim; the no-strike obligation is already founded. The prohibition of sympathy strikes is statutory, not dependent on contractual clauses. Further, present contractual no-strike clauses exist to give carriers a contractual damage claim; the no-strike obligation is already imposed by statute.

Sympathy Strikes Are Enjoinable Under the RLA Where a Minor Dispute Exists.

The Court of Appeals was correct in noting that the RLA's scheme for the regulation of collective bargaining and strikes is different from the regulatory program embodied in the NLRA and that therefore the reasoning in *Buffalo Forge* does not apply to all RLA cases.

The Railway Labor Act mandates compulsory arbitration of all grievance disputes ("minor disputes") and imposes a statutory no-strike obligation in support of this duty to arbitrate. *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30 (1957).

> [T]he compulsory character of the administrative remedy provided by the Railway Labor Act for disputes such as that between petitioner and respondent stems not from any contractual undertaking between the parties but from the Act itself. . . .

Andrews v. Louisville & Nashville R.R. Co., 406 U.S. 320, 323 (1972).

Furthermore, the Railway Labor Act imposes a duty upon carriers and their employees to "make and maintain" collective bargaining agreements during their stated term, 45 U.S.C. §152, First. This duty is likewise enforced by a statutory no-strike obligation. *Chicago & N.W. Ry. Co. v. United Transportation Union*, 402 U.S. 570 (1971); *Long Island R.R. v. System Federation, No. 156, supra.* The only time RLA employees may legally strike is at the expiration of their contract and even then only after exhaustion of intentionally long and drawn-out procedures under Section 6 of the RLA, which are designed to avoid strikes. Contract negotiations under the RLA are administratively controlled by the National Mediation Board. The union is not free to strike nor the employer free to implement

changes in wages and working conditions until 30 days after the National Mediation Board has "released" the parties. 45 U.S.C. §156.

> The major purpose of Congress in passing the Railway Labor Act was to 'provide the machinery to prevent strikes' and the resulting interruptions of interstate commerce. [Citations omitted.]
>
> * * *
>
> As the Supreme Court has noted on several occasions, these procedures are purposefully long and drawn out. Congress desired to avoid compulsory arbitration concerning the content of collective bargaining agreements, and therefore imposed on the parties to a labor dispute the obligation to 'make every reasonable effort' to settle disputes without interruption of interstate commerce.
>
> * * *
>
> [Justice Black noted in his opinion for the Court in *Detroit & Toledo Shore Line v. United Transportation Union*, 397 U.S. 142] that [the] 'crucial aspect of the Act was the power given to the parties and the representative of the public to make the exhaustion of the Act's remedies *an almost interminable process.*' [Emphasis added by the District Court.] This aspect of the Act is 'crucial' because, like the ultimate threat of a strike, it is a force tending to encourage compromise and settlement.

Seaboard World Airways, Inc. v. Teamsters, Local 851, ... F.Supp. ....., 90 Lab. Cas. ¶12,358 (E.D. N.Y. 1980).

On the contrary, under the NLRA a union is free to strike over any grievance at any time during the term of a contract, unless it has *contractually* waived this right in a no-strike clause or in a binding arbitration clause from

which a no-strike clause is implied. 29 U.S.C. §163; *Iodice v. Calabase*, 512 F.2d 383 (2d Cir. 1975). Under the NLRA, a union has no duty to arbitrate grievances unless it has contractually promised to do so. Contract negotiations are not administratively controlled. A union may strike, and an employer may lock out his employees even before an impasse in contract negotiations has been reached. *Lane v. NLRB (Darling & Co.)*, 418 F.2d 1208 (D.C. Cir. 1969).

While under the RLA the National Mediation Board does supervise and participate in negotiations, there is no enforcement agency to enforce the obligations of the Act and remedy unfair labor practices as the National Labor Relations Board does under the NLRA. Conduct so clearly in violation of an NLRA collective bargaining agreement as to constitute a violation of that Act's duty to bargain collectively is enforced through administrative procedures under 29 U.S.C. §§158(a)(5) and 158(b)(3). *See, e.g., Foodway*, 235 N.L.R.B. 1479 (1978). Under the Railway Labor Act unfair labor practices are remedied through court procedures, *see, e.g., Burke v. Compania Mexicana de Aviacion*, 433 F.2d 1031 (9th Cir. 1970), and the duty to "make and maintain" agreements is likewise enforced by the courts. *Long Island R.R. Co. v. System Federation, No. 156, supra.*

Against this differing statutory structure, the Ninth Circuit Court of Appeals was clearly correct in not applying this Court's decision in *Buffalo Forge* to strikes under the RLA.

This Court's primary concern in *Buffalo Forge* was that federal courts would pre-empt the jurisdiction of arbitrators by interpreting collective bargaining contracts during the injunction proceedings.

> But the parties' agreement to adjust or to arbitrate their differences themselves could be eviscerated if

> the courts, for all practical purposes, were to try and decide contractual disputes at the preliminary injunction stage.

428 U.S. at 412.

Arbitrators enforce contracts; courts enforce statutes. Under the NLRA where any no-strike pledge is contractual, the above consideration applies. However, because the no-strike obligation under the RLA is statutory, it is appropriate for the courts to enforce that obligation by means of an injunction without risk of pre-empting the jurisdiction of an arbitrator.

Furthermore, under the NLRA a union is presumed to have a right to strike until it is proven that the union has contracted away that right. *Iodice v. Calabase, supra.* On the contrary, under the RLA a union does not have a right to strike during the term of a collective bargaining contract, and absent special circumstances district courts should enjoin such strikes. To the extent the unions contend their strikes are insulated by the so-called "picket line clauses," the dispute is contractual and subject to System Board of Adjustment arbitration. But the status quo under the RLA is "no-strike" during mid-contract.

II. THE FIRST QUESTION PRESENTED BY THE TEAMSTERS PETITION IS NOT RAISED BY THE RECORD AND IS UNWORTHY OF REVIEW.

TIA opposes the grant of a Writ of Certiorari on the first question presented by the Teamsters Petition in Case No. 80-478, *i.e.*, whether by signing a new collective bargaining agreement, TIA's pending claim for compensatory fines for contempt of the District Court's earlier no-strike injunction became moot.

As noted above at pages 3-4 TIA has a $400,000.00 contempt damage claim pending against the Teamsters. The only questions which remain are: (a) whether the no-strike injunction against a flight engineer sympathy strike was a valid order, and (b) what damages were caused by the Teamsters' contempt of that order. Those issues were pending when the new contract was signed in January 1978.

Immediately after the collective bargaining agreement was settled, the parties entered into separate negotiations for a "back-to-work agreement" aimed at settling all the related issues, grievances, litigation, etc., spawned by the long strike. TIA's contempt damage claim was one of the issues on the table in those negotiations. No back-to-work agreement was ever reached, however, and the flight attendants returned to work with the clear understanding that all grievances and litigation generated by strike incidents were still pending.

A number of discharges and many claims of contract violation arising out of the strike were subsequently pressed by the Teamsters and resolved by System Board procedures. After the contract was signed the Teamsters filed a strike damage counterclaim which they pressed until they lost representation of the flight attendants in June 1979. Until then, the Teamsters never considered any of these claims to be mooted by the new contract.[6] In an affidavit dated July 23, 1979, in response to a direct query on mootness by the Court of Appeals, Teamsters' counsel argued (a) the case was not moot so long as he wished to press a claim that the order was improvidently entered, and (b) the case was not moot so long as the contempt damages claim was pressed by TIA. To dismiss

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6. These facts are not in the record because the Teamsters first raised this ingenious argument in August 1979.

further consideration of the propriety of the injunction, he contended, would take away his defense that the order violated was void *ab initio*.

The Teamsters now argue that the mere signing of the collective bargaining agreement *ipso facto* mooted all issues and all litigation spawned by the strike. Their post-strike processing of their own grievance claims arising during the strike belie this position. Resolution of the propriety of the original injunction is a justiciable issue as long as it is a prerequisite for a damage claim by either party. This is true without regard to whether permanent injunctive relief is still necessary.

The Teamsters' position, if adopted by the Court, would have a deleterious effect on collective bargaining. To avoid a finding of waiver, an employer or union with a valid and substantial strike damage claim would be compelled to reject a new collective bargaining contract until its strike damage claim had been litigated to final judgment.

The Teamsters rely on this Court's decision in *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418 (1911). In *Gompers* the parties entered a settlement which resolved all matters in the litigation—no separate mention was made of the earlier contempt adjudication. Based on this settlement, the whole case was dismissed. This Court held that "When the main case was settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled. . . ." In the instant case, however, TIA has never settled or agreed to dismiss any portion of its injunction action or its contempt damage claim. Moreover, the Teamsters did not agree to dismiss their strike damage counterclaims until after they had ceased to represent the flight attendants. While the parties had agreed to a new bargaining contract, all parties expressly understood when the back-to-work negotiations

failed that they retained all prior claims spawned by the strike. There is thus no similarity between the facts in the instant case and the facts in *Gompers*.

CONCLUSION

TIA respectfully urges this Court to grant the Writ of Certiorari requested by it in Petition No. 80-480 which more clearly presents the issues concerning the relationship of contractual duties under the Railway Labor Act and issues related to the proper accommodation of the no-strike obligations of the Railway Labor Act to the anti-injunction provisions of the Norris-LaGuardia Act. However, the same issue of the enjoinability of the pilots' and flight engineers' sympathy strike is raised by ALPA Petition No. 80-470 and Teamsters Petition No. 80-478, Question 2.

Upon review, this Court should

(1) Hold that federal district courts may interpret collective bargaining contracts to decide the scope of duties and violations of the Railway Labor Act. While arbitration via System Boards of Adjustment determine contract violations, courts have plenary power to enforce statutory duties created by the RLA;

(2) Hold that the effect of the flight attendants' "military no-strike clause" is to continue the old contract in full force as to military operations even after it had expired as to commercial operations thus allowing the flight attendants legally to strike commercial operations. The contract by its terms not having expired as to military operations, the Teamsters represented flight attendants had a *statutory* duty under Section 2, First, of RLA to "maintain that agreement" without strike during its term.

(3) (a) Hold that the flight attendants' strike of military operations was a violation of this statutory duty

and could be enjoined by the court to enforce the statutory obligation. Norris-LaGuardia does not preclude a court from enforcing duties arising out of the RLA. This is particularly true where the limited strike agreement being enforced advances in all respects the policy considerations of the RLA.

(b) Hold additionally, but separately, that the flight attendants' strike was such a clear violation of the *contract* that the union's claim of contractual right to strike did not present even an "arguably arbitrable" issue. In this situation, the Court could enjoin the strike on the same basis that it could issue an injunction to enforce an arbitrator's award to the same effect.

(4) Hold that where a primary strike is illegal and enjoinable, a sympathy strike in support of that strike is enjoinable *a fortiori*.

(5) Hold that the pilots and flight engineers have a duty to "make and maintain" their respective agreements without strike during their respective contract terms (without regard to any contractual no-strike commitments). The RLA regulatory scheme gives employees several special dispute resolution procedures such as compulsory arbitration and administratively-controlled negotiations not found in the NLRA. Concomitantly the RLA does not permit strikes except where the striking employees have exhausted Section 6 procedures. No policy considerations require that this Court permit an exception to this regulatory scheme to permit sympathy strikes during mid-contract.

(6) Hold that its decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976), does not apply to this RLA case. Here the Court is enforcing a statutory no-strike requirement, rather than interpreting and applying a contractual waiver of a statutory right to strike under the NLRA, as in *Buffalo Forge*.

(7) Hold that if the Union's claim that a right to sympathy strike arises out of the contractual picket line clauses in the engineers' and pilots' contracts, then the district court has power to enjoin the strike pending System Board arbitration because the statutory status quo during the term of a contract is "no-strike" under the RLA (exactly the reverse of the statutory status quo under NLRA). This being so, the ability of the parties to contract contrary to the mandate of the RLA is severely limited.[7]

For the foregoing reasons ALPA's Petition for a Writ of Certiorari should be granted, and the Teamsters' Petition for a Writ of Certiorari should be granted with respect to Question 2 and denied with respect to Question 1.

Respectfully submitted,

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7. This is the reason the parties agreed that individual *employees* would be insulated from discipline if they individually refused to cross a *legal* primary picket line—far different from the Union's desire *to compel* its members not to work through an organized, officially sanctioned strike subject to union fines or expulsion.

APPENDIX

In fuller text, Congressman LaGuardia's remarks in the House debates on the Norris-LaGuardia Act, 29 U.S.C. §§101, *et seq.* were as follows:

To allay the fear of the chief opponent of the bill, Congressman Beck, Mr. LaGuardia said:

> "The bill, I will say to the gentleman from Pennsylvania, in no way repeals the railroad labor act, and three-fourths of the argument of the gentleman from Pennsylvania was directed against interference with transportation in interstate commerce; and the gentleman is a sufficiently good lawyer to know the provisions of the railroad labor act, which was passed in 1926.
>
> "Was it to create fear; was it to create prejudice? I will not charge that to the gentleman from Pennsylvania; but it was most unbecoming for a lawyer of his standing to direct his fire entirely on the interruption of transportation of interstate traffic, when there is another law which will take care of that situation.
>
> "Gentlemen, this bill does not—and I can not repeat it too many times—this bill does not prevent the court from restraining any unlawful act. This bill does prevent the Federal court from being used as an agency for strike-breaking purposes and as an employment agent for scabs to break a lawful strike. [Applause.] That is what the bill does." 75 *Cong. Rec.* 5478 (1932).

On the subject of the federal government's obtaining an injunction in the shopman's strike of 1922, Mr. LaGuardia stated:

> "But even that case is beside the point now, because that case would come in under the railroad labor act, which provides mediation and conciliation, which appoints a board of mediation, and the whole procedure of settlement of disputes is outlined in detail in that act." *Id.* at 5479.

Congressman Lankford then asked if the bill would prevent injunctions against railroad strikes, and Mr. LaGuardia said no:

> "Will the gentleman answer this question? Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?
>
> "MR. LAGUARDIA. I think the gentleman was a Member of the House in 1926?
>
> "MR. LANKFORD of Virginia. No.
>
> "MR. LAGUARDIA. We then passed the railroad labor act, and that takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes.
>
> ". . .
>
> "MR. LANKFORD of Virginia. It does not apply to the transportation of milk or other necessities that go in interstate commerce?
>
> "MR. LAGUARDIA. Interstate traffic is entirely covered in the railroad labor act of 1926." *Id.* at 5499.

Finally, Congressman Beck offered an amendment to the bill to exempt public utilities from the anti-injunction provisions. The amendment was defeated, with Mr. LaGuardia arguing against it on the ground that the Railway Labor Act made it unnecessary:

"MR. LAGUARDIA. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Pennsylvania.

"I just want to call attention to the railroad labor act of 1926, which provides in the very beginning of the act:

"[Here was quoted Sections 2 First through Fourth] . . . .

"Mr. Chairman, the law provides every detail for the settlement of disputes. Then, if all direct negotiations fail, the law establishes and maintains a permanent board of mediation. Now, in section 8 of this bill it is provided:

> 'No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.'

"So that there is the tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The workers could not and would not think of going on strike before all the remedies provided in the law have been exhausted. If the railroads have complied, they would not, as has been suggested, be deprived of any relief which they may have in law or equity.

"I submit that the amendment is not at all necessary." *Id.* at 5504.

see 80
478

see 80
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